IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

WP(C).No. 36546 of 2003(A)

PETITIONER:

RASIYA. W/O.VEERAN KUTTY,
THAMASSERY HOUSE, PO KUNNAKAVU,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE VILLAGE OFFICER,
ELAMKULAM VILLAGE, MALAPPURAM DISTRICT.

2. THE DISTRICT COLLECTOR,
MALAPPURAM.

3. THAMARASSRY MUHAMMED,
S/O.MUHAMMED, ELAMKULAM,
MALAPPURAM DISTRICT.

R1 & R2 BY GOVERNMENT PLEADER SRI. SHYSON P MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE RECEIPT DATED 6.8.2002 IN RESPECT OF THE LAND TAX PAID BY THE PETITIONER.

EXT.P2 DEMAND NOTICE DATED 16.8.2003 ISSUED TO THE PETITIONER BY THE SECOND RESPONDENT.

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P. C. NO. 36546 OF 2003

Dated this the 26th day of October, 2006

JUDGMENT

Petitioner is challenging attachment of petitioner's husband's property by the Village Officer pursuant to the order issued by the Judicial First Class Magistrate, Perinthalmanna against third respondent, who is the first accused in CC No. 252 of 1999. Even though petitioner's case is that property was purchased by her husband, Government Pleader based on averments in the counter affidavit filed by the District Collector submitted that the sale was made by the third respondent, the first accused in the criminal case, after noticing that property is going to be attached under order of the Magistrate under Section 83 of the Cr.P.C. In fact Section 83 authorises the Magistrate issuing the order under Section 82 to attach the property simultaneously. The scheme of Sections 82 and 83 should not be allowed to be defeated by accused transferring the property on coming to know about the proceedings before the Judicial Magistrate Court. The case stated by the District Collector is that the accused, who is the brother of the petitioner's husband, sold the property to the husband of the petitioner on coming to know about attachment by the Magistrate

Court and therefore the same is an invalid transaction. The attachment order issued by the Magistrate Court is not on record. Moreover, it is seen that any claim or objection against attachment under Section 83 can be considered by the Magistrate Court which issued the order in terms of Section 84(2) of the Cr.P.C. In the circumstances, W.P. is disposed of directing the petitioner, if she has proper authorisation, to represent the apparent owner of the property or the so-called owner of the property, to file claim petition before the Judicial Magistrate Court under Section 84(2) of the Cr.P.C. and if any application is filed, the Magistrate Court will deal with the same in accordance with the procedure provided therein. Since O.P. was pending for the last three years, petitioner or any other claimant is given two months' time from today to make an application before the Judicial Magistrate of the First Class in terms of Section 84 of the Cr.P.C. If the petitioner does not get any favourable order, the order of the Magistrate Court for attachment of the property will be implemented by the revenue authorities ignoring sale.

(C.N.RAMACHANDRAN NAIR)
Judge